

witness fees and mileage shall be paid by the party at whose request the witness appears, or by the Commission if a witness is subpoenaed on the motion of the Commission or a Judge. This paragraph does not apply to Government employees who are called as witnesses by the Government.

(c) *Motions to revoke or modify subpoenas.* Any person served with a subpoena may move within 5 days of service or at the hearing, whichever is sooner, to revoke or modify the subpoena. The Commission or the Judge, as appropriate, shall revoke or modify the subpoena if it seeks information outside the proper scope of discovery as set forth in § 2700.56(b); or if it does not describe with sufficient particularity the evidence required to be produced; or if for any other reason it is found to be invalid or unreasonable. The Commission or the Judge shall set forth a concise statement of the grounds for such ruling.

(d) *Availability of transcript.* Persons compelled to submit evidence at a public proceeding are entitled to obtain, on payment of prescribed costs, a transcript of that part of the proceeding that sets forth their testimony or refers to their production of evidence.

(e) *Failure to comply.* Upon the failure of any person to comply with an order to testify or with a subpoena issued by the Commission or the Judge, the Judge or the Commission's General Counsel, at the request of the Judge or at the direction of the Commission, may undertake to initiate proceedings in the appropriate district court of the United States for the enforcement of the subpoena.

§ 2700.61 Name of miner informant.

A Judge shall not, except in extraordinary circumstances, disclose or order a person to disclose to an operator or his agent the name of an informant who is a miner.

§ 2700.62 Name of miner witness.

A Judge shall not, until 2 days before a hearing, disclose or order a person to disclose to an operator or his agent the name of a miner who is expected by the Judge to testify or whom a party expects to summon or call as a witness.

§ 2700.63 Evidence; presentation of case.

(a) Relevant evidence, including hearsay evidence, that is not unduly repetitious or cumulative is admissible.

(b) The proponent of an order has the burden of proof. A party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

§ 2700.64 Retention of exhibits.

All exhibits received in evidence in a hearing or submitted for the record in any proceeding before the Commission shall be retained with the official record of the proceeding. The withdrawal of original exhibits may be permitted by the Commission or the Judge, upon request and after notice to the other parties, if true copies are substituted, where practical, for the originals.

§ 2700.65 Proposed findings, conclusions and orders.

The Judge may require the submission of proposed findings of fact, conclusions of law, and orders, together with supporting briefs. The proposals shall be served upon all parties, and shall contain adequate references to the record and authorities.

§ 2700.66 Summary disposition of proceedings.

(a) *Generally.* When a party fails to comply with an order of a Judge or these rules, except as provided in paragraph (b) of this section, an order to show cause shall be directed to the party before the entry of any order of default or dismissal. The order shall be mailed by registered or certified mail, return receipt requested.

(b) *Failure to attend hearing.* If a party fails to attend a scheduled hearing, the Judge, where appropriate, may find the party in default or dismiss the proceeding without issuing an order to show cause.

(c) *Penalty proceedings.* When the Judge finds a party in default in a civil penalty proceeding, the Judge shall

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also enter an order assessing appropriate penalties and directing that such penalties be paid.

§ 2700.67 Summary decision of the Judge.

(a) *Filing of motion for summary decision.* At any time after commencement of a proceeding and no later than 10 days before the date fixed for the hearing on the merits, a party may move the Judge to render summary decision disposing of all or part of the proceeding.

(b) *Grounds.* A motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows:

(1) That there is no genuine issue as to any material fact; and

(2) That the moving party is entitled to summary decision as a matter of law.

(c) *Form of motion and affidavits.* The motion may be supported by affidavits or other verified documents, and shall specify the grounds upon which the party seeks relief. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or be incorporated by reference if not otherwise a matter of record. The Judge shall permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, admissions or further affidavits. When a motion for summary decision is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for a hearing. If the party does not respond, summary decision, if appropriate, shall be entered against him.

(d) *Case not fully adjudicated on motion.* If a motion for summary decision is denied in whole or in part, the Judge shall ascertain what material facts are controverted and shall issue an order

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directing further proceedings as appropriate.

§ 2700.68 Substitution of the Judge.

(a) *Generally.* Should a Judge become unavailable to the Commission, the proceedings assigned to him shall be reassigned to a substitute Judge.

(b) *Substitution following a hearing.* The substitute Judge may render a decision based upon the existing record, provided the parties are notified of his intent and they are given an opportunity to object. An objection to the Judge rendering a decision based upon the existing record shall be filed within 10 days following receipt of the Judge's notice, or the objection shall be deemed to be waived. An objection shall be founded upon a showing of a need for the resolution of conflicting material testimony requiring credibility determinations. Upon good cause shown the Judge may order a further hearing on the merits, which shall be limited, so far as practicable, to the testimony in dispute.

§ 2700.69 Decision of the Judge.

(a) *Form and content of the Judge's decision.* The Judge shall make a decision that constitutes his final disposition of the proceedings. The decision shall be in writing and shall include all findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. If a decision is announced orally from the bench, it shall be reduced to writing after the filing of the transcript. An order by a Judge approving a settlement proposal is a decision of the Judge.

(b) *Termination of the Judge's jurisdiction.* The jurisdiction of the Judge terminates when his decision has been issued.

(c) *Correction of clerical errors.* At any time before the Commission has directed that a Judge's decision be reviewed, and on his own motion or the motion of a party, the Judge may correct clerical errors in decisions, orders or other parts of the record. After the Commission has directed that a Judge's decision be reviewed, the Judge may correct such errors with the leave